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In re Application of
LEIB-MÖSCH, Christine *et al*
U.S. Application No.: 09/914,665
PCT No.: PCT/EP00/02064
Int. Filing Date: 09 March 2000
Priority Date: 10 March 1999
Attorney Docket No.: 10737-006001
For: RETROVIRAL EXPRESSION
VECTORS ON THE BASIS OF HERV-
LONG TERMINAL REPEAT
SEQUENCES

DECISION

This decision in response to the papers filed on 31 January 2002.

BACKGROUND

On 15 October 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee pursuant to 37 CFR 1.492(e) must be provided. Applicants were given two months to respond.

On 31 January 2002, applicants submitted a "Response to Notification of Missing Requirements" which was accompanied by, *inter alia*, an executed declaration signed by four inventors, a petition for a two-month extension and \$400.00 fee, and the \$130.00 surcharge fee.

DISCUSSION

In the instant response, applicants presented a declaration listing four inventors in the above-captioned application. Three of the persons are recorded as inventors on the international publication ("WO 00/53789"). The fourth, Robert Michael Saller, is not listed as an inventor in the international publication. Moreover, there is also no indication that applicants added Mr. Saller as a co-inventor pursuant to PCT Rule 92bis. Nevertheless, Mr. Saller executed the declaration as a co-inventor in the above-captioned national stage application.

37 CFR 1.497(d) applies when the inventorship in a national stage application

filed under 35 U.S.C. 371 differs from that set forth in the international application (see 37 CFR 1.48(f)(1)). 37 CFR 1.497(d) states, in part:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by:

- (1) A statement from each person being added as an inventor . . . that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in § 1.17(l); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignees.

Consequently, applicants must request that Mr. Sallers be added as an inventor pursuant to 37 CFR 1.497(d) since applicants have named an inventive entity different from the inventive entity set forth in the international application.

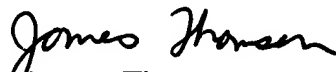
CONCLUSION

For the reasons discussed above, the declaration submitted on 31 January 2002 does not comply with 37 CFR 1.497.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any request should include a cover letter entitled "Request Under 37 CFR 1.497(d)." Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.


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